Security Walls, LLC *and* International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local No. 554. Case 13–CA–114946

August 29, 2014

DECISION AND ORDER GRANTING IN PART AND DENYING IN PART MOTIONS FOR SUMMARY JUDGMENT

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON AND SCHIFFER

Upon a charge filed by International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local No. 554 (the Union) on October 18, 2013, amended on January 30, 2014, the General Counsel of the National Labor Relations Board issued a complaint on February 12, 2014, amended on March 12, 2014, against Security Walls, LLC, the Respondent, alleging that it had violated Section 8(a)(5) and (1) of the National Labor Relations Act. The amended complaint alleges in paragraphs VI(a)-(e) and VIII that the Respondent violated the Act when it exercised its discretion to unilaterally suspend employee Matthew Terres about August 18, 2013, and to unilaterally terminate his employment about August 22, 2013, without providing the Union with prior notice and an opportunity to bargain about Terres' discipline. The amended complaint alleges in paragraphs VII(a)-(c) and VIII that the Respondent violated the Act by failing and refusing, upon requests by the Union on August 19, 20, and 21, 2013, to furnish the Union with information relating to Terres' suspension. On March 23, 2014, the Respondent filed an answer to the amended complaint, denying the unfair labor practice allegations and affirmatively arguing, among other things, that a grievance-and-arbitration procedure to which it and the Union tentatively agreed in April 2013 during the course of collective-bargaining negotiations relieved it of any obligation to bargain with the Union prior to imposing discipline under the Board's decision in *Alan Ritchey, Inc.*, 359 NLRB No. 40 (2012).

On March 31, 2014, the Respondent filed with the Board a Motion for Summary Judgment, with a supporting memorandum and exhibits. On April 7, 2014, the General Counsel filed with the Board a Motion for Summary Judgment, with supporting exhibits. On April 24, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's or the Respondent's motion should not be granted. The Respondent and the General Counsel have each filed: (1) a response to the Board's Notice to Show Cause; (2) a response opposing the other party's Motion for Summary Judgment; and (3) a reply to the other party's opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Rulings on Motions for Summary Judgment

"It is a settled principle that for summary judgment to be appropriate the record must show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Conoco Chemicals Co.*, 275 NLRB 39, 40 (1985) (citing *Stephens College*, 260 NLRB 1049, 1050 (1982)); see also Fed. R. Civ. P. 56(c) (relied upon by *Stephens College*). Section 102.24(b) of the Board's Rules and Regulations provides that "[t]he Board in its discretion may deny [a motion for summary judgment] where the motion itself fails to establish the absence of a genuine issue, or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist." Section 102.20 of the Board's Rules and Regulations provides that "any allegation in the complaint not specifically denied . . . shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown."

With regard to the allegations of the amended complaint's paragraph VI(a)-(e) and the related part of paragraph VIII, the Respondent argues that, in April 2013, it entered into a binding grievance-and-arbitration agreement with the Union that relieved it of any preimposition bargaining obligation under *Alan Ritchey* and that its discipline of Terres was not, in any case, discretionary, as required for the bargaining obligation to attach under that case. It further argues that, because it discharged Terres for cause, Section 10(c) of the Act bars the General Counsel's requested make-whole remedy.[1]

With regard to the allegations of the amended complaint's paragraph VII(a)-(c) and the related part of paragraph VIII, the Respondent argues that because the Union did not make use of the grievance mechanism provided for by the April 2013 agreement, the Respondent was not required to respond to the Union's request for information concerning the discipline of Terres.

The General Counsel argues that the undisputed facts establish that the Respondent imposed discretionary dis-

[1] In relevant part, Sec. 10(c) reads: "No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause."

cipline upon an employee in the bargaining unit, at a time that it had recognized the Union, but before the parties had agreed upon a first contract, in violation of Section 8(a)(5) and (1) under *Alan Ritchey*. In response to the Respondent's Motion for Summary Judgment, the General Counsel argues that the April 2013 agreements were tentative agreements, and therefore not binding as a matter of law prior to the conclusion of a final collective-bargaining agreement, that the Respondent has not demonstrated any exigent circumstances that could justify its imposition of discipline without preimposition bargaining, and that Section 10(c) does not bar an order of reinstatement and backpay because the Respondent's exercise of discretion in deciding to discharge Terres means that his discharge was not relevantly "for cause."

With regard to the information request issue, the General Counsel argues that the Respondent had a duty to supply requested information relating to discipline of a unit employee, independent of any obligation it may have had to bargain about that discipline, and independent of whether or not the parties had entered into a binding grievance-and-arbitration agreement.

Having duly considered the matter, we find that the General Counsel's and the Respondent's Motions for Summary Judgment have failed to establish the absence of a genuine issue of material fact, or that either party is entitled to judgment as a matter of law, as to the violations of Section 8(a)(5) and (1) alleged in paragraph VI(a)-(e) and the related part of paragraph VIII. We accordingly find that summary judgment is not appropriate as to those allegations.

As to the allegations of paragraph VII(a)-(c) and the related part of paragraph VIII, however, it is well established that an employer's failure to supply presumptively relevant requested information, which includes information relating to discipline of unit employees, violates Section 8(a)(5) and (1) of the Act. See, e.g., *Booth Newspapers, Inc.*, 331 NLRB 296, 296 fn. 2, 299–300 (2000), and cases cited therein. Neither the Respondent's answer nor its motion, opposition, or responses specifically deny the factual complaint allegations, or show cause why they should not be found to be true. Under Section 102.20 of the Board's Rules and Regulations, those allegations therefore shall be deemed to be admitted to be true and are so found. We accordingly shall grant the General Counsel's Motion for Summary Judgment only as to the violation of Section 8(a)(5) and (1) alleged in paragraph VII(a)-(c) and the related part of paragraph VIII of the amended complaint.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a limited liability company with an office and place of business in Knoxville, Tennessee, has provided security services for Argonne National Laboratory located in Argonne, Illinois. During the 12-month period preceding the issuance of the amended complaint, a representative period, the Respondent performed services for entities located outside the State of Tennessee valued in excess of $50,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local No. 554, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times Juanita Walls held the position of the Respondent's chief manager, and has been a supervisor within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act. The following employees of the Respondent constitute a unit (the unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time, and regular part-time Security Officers and Sergeants performing security duties as defined in Section 9(b)(3) of the Act for the Employer at the Argonne National Laboratory, located at 9700 South Cass Avenue, Argonne, Illinois, but excluding all office clerical employees, professional employees and supervisors as defined in the Act.

About December 1, 2012, the Respondent, through Juanita Walls, recognized the Union as the exclusive collective-bargaining representative of the unit, and, at all material times, based upon Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About August 19, 20, and 21, 2013, the Union requested, by email, that the Respondent furnish the following information relating to the August 18 suspension of unit employee Matthew Terres:

> i) The reasons for Matthew Terres' removal from the work force;
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> ii) Why Terres was not advised of the reasons for his removal;
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> iii) Copies of any/all documents or written material pertaining to Matthew Terres' suspension.

The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about August 19, 2013, the Respondent, through Juanita Walls, has failed and refused to furnish the Union with the information requested in its August 19, 20, and 21, 2013 emails.

CONCLUSION OF LAW

By failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union with the information requested by the Union on about August 19, 20, and 21, 2013, we shall order the Respondent to cease and desist from such conduct and to furnish the Union with the requested information.

ORDER

The National Labor Relations Board orders that the Respondent, Security Walls, LLC, Argonne, Illinois, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union, International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local No. 554, by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union in a timely manner the information requested by the Union on about August 19, 20, and 21, 2013.

(b) Within 14 days after service by the Region, post at its Argonne, Illinois facility copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 19, 2013.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 13 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the Respondent's Motion for Summary Judgment is denied, and the General Counsel's Motion for Summary Judgment is denied except with respect to the violation of Section 8(a)(5) and (1) alleged in paragraph VII(a)-(c) and the related part of paragraph VIII of the amended complaint.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 13 for the purpose of arranging a hearing before an administrative law judge limited to the allegations set forth in amended complaint paragraph VI(a)-(e) and the related part of paragraph VIII. The administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall be applicable.

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[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. August 29, 2014

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the Union, International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local No. 554, by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

WE WILL NOT, in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on about August 19, 20, and 21, 2013.

SECURITY WALLS, LLC

The Board's decision can be found at www.nlrb.gov/case/13-CA-114946 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.